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February 3, 2005

EX PARTE

Ms. Marlene H. Dortch, Secretary Federal Communications Commission 445 12th Street SW Room TW-A325 Washington, DC 20554

Re: Ex Parte Presentation - Unified Intercarrier Compensation, CC Dkt No. 01-92; Intercarrier Compensation for ISP-Bound Traffic, CC Dkt Nos. 99-68, 96-98

Dear Ms. Dortch:

Yesterday, on behalf of EarthLink, Inc., the undersigned had separate telephone conversations with Christopher Libertelli, Senior Legal Advisor to Chairman Michael Powell; Jennifer Manner, Senior Counsel to Commissioner Kathleen Abernathy; Jessica Rosenworcel, Legal Advisor to Commissioner Michael Copps; and Scott Bergmann, Legal Advisor to Commissioner Jonathan Adelstein, to discuss issues relating to the above-captioned proceedings.

In particular, we discussed the treatment of "virtual NXX" or "virtual FX" ("VNXX") arrangements used to facilitate consumer access to Internet Service Providers ("ISPs"). EarthLink urged the FCC to issue an order immediately reiterating that such traffic is subject to the compensation requirements delineated previously by the FCC in the *ISP Remand Order* (see *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 16 FCC Rcd 9151 (2001) ("*ISP Remand Order*")) and stressed that such arrangements affirmatively promote the public interest by fostering affordable, ubiquitous Internet access for all Americans, regardless of where they live.

As a threshold matter, EarthLink noted that the treatment of ISP-bound traffic using VNXX arrangements has been settled previously by the Commission in the *ISP Remand Order*. There, the FCC established a compensation scheme for *all* ISP-bound traffic, making no distinction between VNXX traffic and other ISP-bound traffic. Notably, while some ILECs now urge that this compensation regime is causing financial hardship, the FCC has already found that there are no inherent cost differences between ISP-bound and voice traffic. *Id.* at ¶ 90. Thus, while some ILECs now urge that the FCC find that such traffic is interexchange traffic subject to access charges, what they really seek is untimely reconsideration of an issue already settled.

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Critically, in considering the treatment of VNXX ISP-bound traffic, the FCC should be mindful of the role it plays in ensuring that geographically dispersed consumers have affordable Internet access. As such, the FCC should affirmatively find that the use of VNXX to serve ISPs furthers important statutory policy interests, as it is an important policy goal to see that consumers living in sparsely populated areas can retain affordable, ubiquitous Internet access. ("Access to...information services should be provided in all regions of the Nation." 47 U.S.C. §254(b)(2).) In fact, were the FCC to single out ISP-bound VNXX traffic by excluding it from the general ISP traffic compensation regime – or subjecting it to access charges as some ILECs apparently urge – it could disproportionately impact rural residential users, who could be required to pay communications surcharges for what were previously local calls. The FCC should retain, not reverse, its successful policy of widespread, affordable Internet access for all Americans.

Pursuant to Section 1.1206(b) of the Commission's rules, copies of this notice are being filed electronically in the above-captioned proceedings for inclusion in the public record. Should you have any questions, please do not hesitate to contact me.

Sincerely,

/s/

Donna N. Lampert *Counsel for EarthLink, Inc.*

cc: via email
Christopher Libertelli
Jessica Rosenworcel
Jennifer Manner
Scott Bergmann
Daniel Gonzalez